

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application 05-02-027
(Filed February 28, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING ORA'S SECOND MOTION TO COMPEL**

This ruling grants, in part, and denies, in part, the Second Motion to Compel, (Motion) filed on May 27, 2005, by the Commission's Office of Ratepayer Advocates (ORA). Certain portions of the Motion have been rendered moot by parties' subsequent resolution, as noted below.

A response in opposition to the Motion was filed on June 2, 2005 by the Applicants. ORA sent a further informal communication to the service list and the ALJ by email on June 3, 2005, reporting on further resolution of certain issues in the Motion and providing further argument in response to Applicants opposition on remaining issues. Applicants sent an information communication to the service list and ALJ by email on June 6, 2005, asking the ALJ to disregard ORA's communication in that it constitutes an unauthorized reply brief.

Alternatively, Applicants request that the ALJ consider the Applicants' email as their informal reply to ORA's "informal response."

While parties are to follow the Commission's Rules of Practice and Procedure with respect to the submission of pleadings and argument, in this particular instance, the informal emails both of ORA as well as that of the Applicants will be taken into consideration in the ruling on this Motion.

ORA seeks to compel a response to portions of ORA Data Requests Set 3 and 6 ("DR #3" and "DR #6"). ORA's Motion addresses concerns as to the timeliness of responses, particularly in view of the expedited schedule. ORA addresses both the manner in which Applicants are requested to provide responses, as well as specific materials and information.

Process for Verifying Completeness of Responses

In instances where parties' discovery dispute has been resolved, no further ruling is needed on those matters. In instances where Applicants have agreed to provide previously contested materials, but where no due date for delivery is indicated, Applicants shall provide such additional materials within four business days of this ruling. Applicants will not be required to provide a separate written verification of every separate data response as requested in ORA's Motion provided that Applicants produce a complete response within four business days. To the extent that Applicants produce a less-than-complete response to any Data Request item, pursuant to this ruling, the Applicants shall provide a written statement to ORA within four business days listing any outstanding items pursuant to this ruling, with a date certain as to when the delinquent items will be provided. Applicants' failure to identify any such items not yet provided within four business days with a delivery date, shall be a violation of this ruling.

Process for Identifying Documents

ORA expresses concerns concerning the process for controlling and identifying documents provided in discovery. ORA has offered to stipulate with Applicants that where a paper document was provided, that numbering will control, and the electronic files need not be further identified. Where electronic documents are so large (e.g., over 500 pages if printed) that no paper document was provided, the electronic files on a CD or other electronic medium need to be produced with some sort of index so that ORA knows what is on the disks. ORA states that often, multiple responsive documents are provided on a disk, but with no table of contents, labels, or other guides included, and without separate notice to ORA pertaining to disk contents, thereby effectively hiding those documents. ORA argues that its suggestions for clarification on the protocol for electronic documents in discovery (Exhibit G to the ORA Motion) have gone unanswered.

ORA's suggested protocols for electronic documents appear reasonable, and are adopted in the ruling below.

Disposition of Specific Data Requests

The ruling on each of the specific data requests at issue is addressed below:

Data Request 3-2:

ORA seeks production of all versions of the document entitled "SBC Offshore Operating Practice," and a verified response that Applicants have done so. Although SBC produced versions of this document, ORA claims in its email that SBC has not produced all relevant versions. Specifically, ORA has not received the 33-page version titled: "SBC Offshore Operating Practice," referenced in *SF Chronicle* reporter David Lazarus' October 31, 2003 article. ORA claims that the documents provided on the CD do not include this report, but

contain other versions. ORA claims these other versions have been extensively edited. ORA seeks an order compelling production of all versions of this document, including the 33-page version in effect in October 2003.

SBC agrees to provide ORA with the October 2003 version of the document, but criticizes ORA for expanding its original request to include any and all versions of the document. SBC argues that there is no reason to require production of every prior version of the document, which is irrelevant to SBC's current practice.

Discussion

SBC has complied with the terms of this DR as originally drafted, and has agreed to provide the October 2003 version subsequently requested by ORA. Moreover, in its email reply, SBC explains that it did not edit or redact any of the documents, but instead provided them in their existing form (*i.e.*, native format), as requested by ORA, and that a native file would reflect changes and prior edits. ORA's subsequent expansion of the initial request to include any and all versions goes beyond the scope of the original DR giving rise to the Motion. Accordingly, upon Applicants' production of the October 2003 version under the schedule discussed above, this DR shall be deemed complete.

Data Requests 3-5 and 3-6:

ORA seeks names of all business firms or other entities that have access to SBC customer information and particularized data including the number of records accessed and the nature of the work performed. ORA seeks a complete, verified answer for the identity of affiliates and third parties with access to such customer proprietary data. These DRs address concerns about the confidentiality of customer data, asking specifically for the names of all affiliates and third parties with access to SBC California customer proprietary data.

SBC provided certain information in response to Request 3-5 on June 2, 2005, regarding the names of business firms or other entities, of which SBC is currently aware, that have (or may have) ongoing access to SBC California customer information.

The response that SBC provided, however, only covered 21 such vendors. ORA seeks a response for all vendors.

SBC claims that it has provided a thorough response to the extent of data maintained in the normal course of business. SBC objects to providing further information for additional vendors as it would require the effort of dozens of individuals and weeks to complete. SBC objects to such a request as overbroad and irrelevant. SBC argues that Data Request 3-6, which builds upon the names identified in Data Request 3-5 is not relevant. Nonetheless, SBC agrees to provide the means of access provided to SBC California customer information, the nature of the work performed with respect to customer records, the business address of the company and where the work is being performed.

ORA seeks the responses not only on disk, but on some medium (e.g., hard copy) with Bates document control numbers, to be referenced in a formal response. Applicants reply that information sought in Data Request 3-6(b) cannot be provided because SBC California does not maintain this data. ORA argues, however, that the response as produced *does* contain this data as to some of the companies.

Discussion

SBC has provided a response to this Data Request regarding the names of business firms or other entities, of which SBC is currently aware, that have (or may have) ongoing access to SBC California customer information. Requiring SBC to provide further information for additional vendors beyond what SBC

maintains in the normal course of business, and what it has already committed to provide, as outlined above, would be an undue burden. As SBC notes, civil law standards do not require further production when such information is not maintained in the normal course of business. *See, e.g.*, Civ. Proc. Code § 2030(f)(2) (no duty to create compilation, abstract or summary of information for other party); Civ. Proc. Code § 2031(A)(1) (production of documents required only to the extent that they are “in the possession, custody, and control” of the other party).

SBC shall promptly provide any outstanding responsive data for DR 3-5 and 6 that it has committed to provide under the four-day schedule adopted above, but no further order to compel will be granted to produce information not maintained in the normal course of business with respect to DR 3-5 and 6.

Data Requests 3-7 and 3-8:

ORA’s data requests 3-7 and 3-8 require the same information from AT&T, as requested above from SBC, about affiliate and third party access to AT&T customer data. In light of several recent cases of information theft from corporate databases, and in light of statutory privacy protections, ORA is concerned about the security of ratepayers’ customer proprietary data, and to whom such data is being given when SBC/AT&T work is outsourced to affiliates or third-party vendors.

ORA seeks from AT&T a complete, verified answer to its requests for identity of affiliates and third parties with access to customer proprietary data. In response to the “meet and confer” letter, AT&T gave a web citation setting forth AT&T’s current privacy policies. ORA contends that the web site does not answer the interrogatory. ORA agreed to continue talking with AT&T about this, but argues that it does not have the luxury of waiting for AT&T’s response,

and requires prompt and full disclosure of the information requested in order to prepare testimony.

AT&T claims the data request is overbroad, arguing, for example, that ORA has not explained why “the number of records accessed” in some unspecified time period is relevant to, or likely to lead to admissible evidence in this proceeding. AT&T believes that its privacy policy constitutes an acceptable “baseline of current operations” as sought by ORA regarding privacy issues. AT&T indicates it has identified “some additional information that may be responsive to ORA’s request” without describing the nature of the “additional information.”

In its email, ORA states that although AT&T has offered to “look into” providing ORA a response to these requests for all affiliates & third parties with access to AT&T’s customer CPNI, such a commitment has not yet been made. Lacking a commitment for a complete response, ORA requests a ruling compelling a full response to these data requests.

Discussion

AT&T shall be directed to provide a response to ORA on the same basis as ordered above for SBC with respect to DR 3-5 and 6. That is, AT&T shall provide all relevant responsive information that it maintains in its normal course of business, but shall not be required to hire consultants or undertake new studies to extract additional data that is not already in its possession.

Data Request 3-11:

ORA Data Request 3-11 asked AT&T to produce all service quality standards to which it is subject in all other states in which it operates. ORA seeks a verified answer to this question as written. Applicants object on over breadth and relevance grounds. ORA argues that service quality is an issue in this

proceeding. Staff's specific concern is the problem of "service quality arbitrage" identified in Commission R.02-12-004, i.e., the flight of operations monies to those states with higher standards than California. ORA thus argues that a relevance objection is inapposite.

In response to the objection as to over breadth, ORA is willing to accept an internal analysis by AT&T identifying the state service quality standards under which it operates. In its email reply, ORA disputes the accuracy of AT&T's claim that the information on applicable service quality standards in the states where AT&T operates is available to ORA. ORA claims that it would take ORA months to compile a comprehensive list of the service standards applicable in the various states. ORA has offered to limit its request to documents consisting of or reflecting internal analyses by AT&T identifying the state service quality standards under which it operates, and requests a ruling compelling the production of same.

Discussion

ORA's offer to narrow its request, as noted above, shall be incorporated as the disposition on this Data Request. Accordingly, AT&T is directed to provide to ORA responsive documents consisting of, or reflecting, internal analyses by AT&T identifying the state service quality standards under which it operates. AT&T shall follow the document standards prescribed in Ordering Paragraph 6 of this ruling.

Data Request 3-12:

ORA seeks production of all surveys or survey results having to do, in whole or in part, with AT&T customer satisfaction in California, including any national surveys including California respondents from 2000 to the present, and a verified answer that they have done so.

Applicants object to this request as overbroad on a similar basis as for Request 3-11. In response to the “meet and confer” email, AT&T stated that it only had national surveys which included California. ORA indicates it has requested these, but claims that it is unclear whether AT&T will produce them. ORA thus moves for an order requiring prompt production of these documents. ORA agrees to withdraw its motion as to DR 3-12 if AT&T commits to produce such surveys as it has, and a response verifying that such production has occurred.

In response, AT&T agrees to produce the national surveys that ORA seeks. Applicant objects to ORA’s demand for an accompanying verification on the grounds that it is contrary to the ALJ ruling on ORA’s previous motion to compel indicating that no such verification was required.

In its email reply, ORA states that AT&T has vaguely stated that it would produce national customer satisfaction and service quality surveys and survey results relating at least in part to California customers by next week. Not having the documents in hand, however, ORA asks that this be included in any ruling.

Discussion

AT&T shall produce such national surveys as are within its possession, from year 2000 to the present, having to do, in whole or in part, with AT&T customer satisfaction. AT&T shall provide ORA with all such surveys within four business days of this ruling.

Data Request 6-1:

Request 6-1 asks for “SBC’s, AT&T’s, SBC CA, and AT&T CA business plan(s) (vision, strategic, view, forecast, and/or their equivalent) that were prepared for each of the years from 2002 to the present.” In its “meet and confer” email, ORA offered to settle for production of the SBC/AT&T’s annual

business plan(s) distributed to Applicants' upper management and boards of directors in each of the calendar or fiscal years identified, and the latest SBC CA's financial benchmark report as what was submitted in R.01-09-001/I.09-01-002, response to ORA data request UTI-Pacific-01-7."

While objecting to this request as overbroad and burdensome, SBC supplemented its original response and agrees to provide ORA confidential business plans covering SBC California's territory for calendar years 2002-2005.

Although SBC's Supplemental Response states that SBC will "produce responsive documents," ORA complains that SBC does not identify such documents, nor clearly state that it is producing *all* responsive documents in its possession. ORA moves for an order compelling a full verified response to this request, and the production of responsive documents.

ORA acknowledges by email that SBC produced year 2002, 2003 Pacific Region Commitment budget, 2004 and 2005 SBC West Commitment budget, but is not clear as to whether SBC West Commitment budgets were substitutes for Pacific Region. In addition, ORA's preliminary review of the data presented (and recent meet and confer discussions) indicates that SBC has not provided any national business plans, e.g., the business plan (or commitment budget) of SBC Communications, Inc. ORA also requires Bates-stamped hard copies of the documents (ORA has the California documents only on disk), along with some sort of response or verification that these are all responsive business plans found after reasonable search and inquiry. ORA also indicates by email that AT&T has made the further oral offer to produce on CD all business plans submitted to the FCC, as well as to make responsive business plans available in its offices. Based on this oral commitment, ORA tabled its motion on 6-1 as it relates to AT&T.

In email reply, Applicants dispute ORA's statement claiming that AT&T had made an oral offer to produce business plans on CD. AT&T indicated that it would consider providing such plans on CD, and that issue remains under consideration. AT&T affirms that it has agreed to make the FCC production, which includes business plans, available in its offices in San Francisco (*see* Miller Decl., 6/2/05, Exh. 2) and that such plans were included in the FCC documents reviewed by ORA's representatives in Washington, D.C. on May 20, 2005. AT&T denies that ORA's motion even moved to compel any further response to DR 6-1 from AT&T (*see* ORA Motion, 5/27/05, p. 8).

Discussion

SBC states that it has performed a diligent search and inquiry, in compliance with the ALJ's May 25, ruling, and produced responsive documents on behalf of the regulated entity in California. As directed above, if SBC has any remaining documents that are responsive to the Data Request that it has not yet provided, it is directed to do so within four business days of this ruling, or else, to provide written notice to ORA within four business days of all specific remaining documents that are still due with a delivery date for the provision of each.

As part of its completed response, SBC is directed to provide bates-stamped hard copies, as requested by ORA. AT&T is directed make its business plans available to ORA consistent with its agreement as noted above, and to produce its business plans on CD that are responsive to Request 6-1. Parties shall comply with the document production requirements in Ordering Paragraph 6 of this ruling.

Data Request 6-4:

ORA describes Request 6-4 as a companion request, in part, to Request 6-3, seeking documents, data and studies “identifying likely California-specific competitive challengers and the *markets and services* where those competitive telecommunication challengers are expected to be most demanding of a response from SBC in California if merger (i) is not approved; and (ii) is approved.” In its “meet and confer” correspondence, ORA offered to limit and simplify its request as follows: all studies performed for or by Applicants or either of them, or for or by third parties, which identify California-specific challengers to SBC California or a merged entity including SBC California if the merger (i) is not consummated (i.e., SBC California as stand-alone); and (ii) is consummated.” ORA argues that this formulation avoids the objection that ORA is seeking an analysis, calculation, or compilation not already in existence.

ORA claims that SBC offered only a vague “further response,” but no commitment to produce anything. The SBC “confidential” Supplemental Response consists of four pages of narrative, but no commitment to produce documents. ORA does not accept SBC’s response, and moves for an order compelling SBC to provide a verified response, stating either that it is producing all (identified) documents responsive to the request as modified, or that it has performed a diligent inquiry and search and found no responsive documents.

AT&T stated that it had “performed a reasonable and diligent inquiry and has identified no documents responsive to this request.” ORA accepts AT&T’s response, if verified. ORA thus seeks an order compelling AT&T to provide its response in a formal verified answer.

In its email reply, ORA states that Applicants provided a lengthy narrative (the same narrative as in response to 6-3), which does in fact mention documents,

including the testimony and applications in this proceeding. The documents mentioned have Bates numbers associated with them. ORA still seeks a response in which Applicants confirm that they “performed a reasonable search and these are all of the studies of potential competitors which we found,” and then listing the documents. In its email reply, Applicants reiterate that their response is complete.

Discussion

In response to the Motion, SBC states that it provided a complete response to ORA in its May 26 supplement. SBC attached the Declaration of Peter Hayes, identifying the materials provided to ORA in response to this question.

AT&T likewise represents that it has “performed a reasonable and diligent inquiry and has identified no documents responsive to this request.”

The representations of SBC and AT&T are hereby accepted as constituting verification that they have provided a complete response to this request. Applicants remain subject to Rule 1 of the Commission’s Rules of Practice and Procedure as to the truthfulness of their representations. Accordingly, no additional layer of written verification will be required.

Data Request 6-7:

In reference to specific testimony (Declaration of Thomas Horton), ORA asks Applicants to “explain what is meant by a *unified IP-based network*, and what this network would look like in terms of facilities that are employed and services that it can deliver as compared to the current network.” Apparently responding for both Applicants, AT&T referenced five separate pieces of testimony.

In its email reply, ORA states that while ORA finds that Applicants’ reply to Request 6-7 continues to be “less than responsive to the DR as propounded,”

ORA agrees to withdraw the motion as to this data request, without prejudice to re-asking the question at a later time.

AT&T objects to ORA's attempt to withdraw this request "without prejudice" so that ORA may ask the question again.

Discussion

Given the responsive answer to this question by AT&T, ORA has not explained how the answer is "less than responsive", or why ORA still needs to keep open the option to renew this question at some undefined later time "without prejudice." No further response is required with respect to this Data Request.

Data Request 6-8:

In Request 6-8, ORA asks for all documents produced in "response[]" to the FCC's Initial Information and Document Request of April 18, 2005." ORA understands that Applicants produced approximately 15 boxes of documents, and substantial additional information on electronic media, at the FCC on Monday, May 9, 2005. After a week of discussion, ORA representatives were allowed to view these documents. To avoid further delay, ORA agreed to request copies only of documents it knows are needed to prepare testimony, without prejudice to its right to obtain all boxes and electronic media of SBC's FCC submission.

ORA asserts two problems: (1) SBC produced a requested subset of these documents but *only in electronic Acrobat or .tif form*, in which form some of the documents were either turned upside down or out of alignment, making reading very difficult – and this, even though the documents were produced to the FCC in hard-copy.

ORA indicates that Applicants have not responded to ORA's letter suggestions regarding electronic data and have refused to confirm that ORA can have copies of all boxes if it so seeks. ORA therefore seeks an order compelling Applicants to provide all such copies if ORA requires, to avoid delay or difficulty if ORA needs to request this material in the future, and to produce them in their "native form" pursuant to the suggestions for a protocol on electronic documents. ORA indicates that it will not request all 15 boxes of the materials unless necessary.

SBC argues that it is working cooperatively with ORA in providing access to FCC documents, as needed, and that there is no need to issue any order with respect to this data request. The parties scheduled a meet-and-confer telephone call on June 2 to discuss, among other items, the FCC documents.

In its email reply, ORA states that it had offered to both SBC and AT&T to resolve all outstanding disputes related to this request for the so-called "FCC documents" by accepting the production of all of these documents as Bates-numbered .pdf files on disk. This would be a paperless production, which ORA understands would entail only the copying of disks in the possession of Applicants' California counsel. ORA believes that it has an oral agreement, but no written commitment to provide this by a date certain. ORA has no commitment from AT&T on this issue. ORA thus requests a ruling compelling the production of these disks, and the concomitant response to resolve all disputes related to Applicants' documents as submitted to the FCC.

As reported in its email, SBC informed ORA on Friday, June 3 that it would provide ORA (because of its status as a division of this Commission) with CDs of the material. Applicants believe there is nothing to compel at this point.

Discussion

In view of SBC's express representation that it informed ORA on June 3 that it would provide ORA with CDs of the requested material, consistent with the parties' oral agreement, there is no further need for a Commission ruling with respect to the DR, except for a requirement with respect to the delivery due date. SBC is required either to produce CDs of the material within four business days of this ruling, or else provide a written statement to ORA within four business days confirming a delivery date for any outstanding materials.

Data Request 6-10:

This Data Request is intended to measure SBC's commitment to enter "out-of-region markets as required by its merger with Ameritech." Dogan Decl., Ex. 3.

Applicants objected to the initial version of Request 6-10 on over breadth and burden grounds. ORA offered to limit this request by deleting certain portions:

Applicants provided a limited response but objected to the full request, arguing that the burden of requiring SBC to segregate 30 separate out-of-region markets for ORA and separately report on each one is far outweighed by any relevance the data might contain. In its email reply, ORA states that while Applicants' limited reply continues to be "less than responsive to the DR as propounded," ORA withdraws this data request, without prejudice to re-asking the question at a later time.

Discussion

Since ORA has withdrawn this data request, no further Commission action shall be taken regarding it in this ruling.

Data Request 6-11:

ORA requests the “share of the wireless market held by Cingular Wireless nationally, within SBC California operating areas, in-region, and out-of-region.” Applicant SBC stated that it “cannot respond to questions on behalf of Cingular.” ORA does not request that SBC respond “on behalf of” Cingular, but that SBC provide information in its possession, custody or control *about* Cingular. In a “meet and confer” session, SBC offered to provide its best estimate of over-all market share, but not separately for any of the subsidiary categories. SBC provided a “confidential” supplemental one-sentence response regarding market share, but did not include AT&T numbers within its response even though the Cingular/AT&T merger had been consummated at that time.

ORA seeks a response to the full extent of information in SBC’s own possession, custody or control, or in that of its affiliates. To the extent SBC claims it does not have any or all of such information within its possession or that of its affiliates, ORA seeks a verified response from a knowledgeable SBC employee, so stating.

SBC claims that it does not have other available data to respond to this request beyond what it has already provided, and does not have data to provide an estimate for Cingular’s share of California wireless service.

In its email reply, ORA challenges this claim, arguing that it appears to be a misrepresentation. ORA possesses an electronic document, apparently produced to the FCC by SBC, labeled “Customer Analytics and Research ... *SBC Communications, Inc., Proprietary and Confidential*” which shows a pre-merger reference to Cingular as “SBC” wireless, with Cingular’s market share in every state, followed by reference to AT&T wireless and AT&T’s market share in every state. ORA requests a ruling compelling Applicant to respond to this (and other

data requests) with all knowledge, data and documents available to SBC as well as knowledge data and documents in the possession of its California affiliates and any other affiliate in which it owns a 50% or greater share.

Discussion

This data request shall be deemed complete in view of SBC's assertion that it does not have other available data to respond to this request beyond what it has already provided, and does not have data to provide an estimate for Cingular's share of California wireless service. In its email reply to ORA, SBC also addresses ORA's claim that an internal document from SBC's Consumer Analytics and Research group contains total California data. SBC believes that ORA may be referring to a document provided during the course of discovery in this proceeding, that has specific limitations to the estimates provided. Specifically, the limitations are noted on the first page of the report, and inform the reader that "The state level sample excludes non SBC company serving areas and any metros surveyed in the state." Thus areas outside of SBC California's footprint are not tracked. Moreover, SBC states that it has confirmed that any reference to "SBC" and "AT&T" is simply a pre-merger reference to Cingular Wireless and AT&T Wireless that was chosen as a matter of convenience by the Consumer Analytics and Research group. In view of this explanation, it is concluded that SBC is correct in its representation that it has no further responsive documents relevant to this Data Request.

On that basis, no further response shall be compelled.

Data Request 6-12:

ORA seeks the central business district (CBD) maps on the template submitted to the FCC in August, 2004: one copy of the 7 California CBD maps with the AT&T owned fiber routes and the AT&T served customer locations

highlighted; one copy of the 7 California CBD maps with the non-ATT CLEC fiber and customer-served locations highlighted. ORA seeks a response to the best of Applicants' knowledge and ability. ORA also seeks, by separate response if necessary (i.e., if SBC is forbidden from disclosing this to its merger partner AT&T at this point in time), the total number of SBC retail end-user customers in the 7 CBD areas receiving service at a T-1 level or higher bandwidth.

ORA seeks to build on maps that it believes were already submitted to the FCC, identifying locations at which, according to SBC, CLECs were serving enterprise customers via special access or via CLEC-owned fiber. ORA seeks this information to identify which of the already identified CLEC fiber in fact belongs to or can be attributed to AT&T. ORA claims this request is relevant in assessing the prospects of post-merger competition and assessing claims that this merger will not adversely affect competition.

ORA believes these materials have been submitted and re-submitted to the FCC as non-confidential material, and are in the public realm. Thus, ORA questions Applicants' objections that these maps cannot be produced "for security reasons." Should they deem it necessary, however, ORA agrees that Applicants can submit the requested information per § 583.

ORA believes that Applicants have the requested information in a readily retrievable state, and has in fact done at least one in-depth study on this issue. ORA indicated a willingness to limit the DR as follows: provide one copy of the seven California CBD maps (which already show the fiber routes of all CLEC fiber routes) showing which are the AT&T owned fiber routes and the AT&T served customer locations, and provide a separate version of the map showing the non-ATT CLEC fiber and customer-served locations (without 2 versions of the map, it might be impossible to tell which fiber routes belong to which

company where the fiber overlaps). Finally, state the total number of SBC retail end-user customers in the 7 CBD areas receiving service at a T-1 level or higher bandwidth (what ORA, AT&T, FCC, and SBC – in other contexts – have referred to as “enterprise” customers).

ORA moves for a ruling compelling disclosure of at least this information, if not a complete response to the Request.

SBC objects on the grounds that it does not have the data readily available and cannot easily provide it. SBC contends that updating the maps, as requested, would require outside consultants and about two months.

ORA claims that Applicants are each capable of providing a full and complete answer to this request. In addition to the August 2004 SBC ex parte presentation to the FCC of CLEC fiber maps, ORA found SBC documents showing all CLECs' fiber in California urban centers. ORA finds the paper copy to be of such poor quality as to preclude further analysis, but the native form of the facilities maps appears to be electronic. ORA contends that both SBC and AT&T have this information, and should provide a full response, i.e., maps showing AT&T fiber and "lit" buildings or customer service locations; maps showing other CLEC fiber and customer service locations; and disclosure of SBC "special access" customers in each of the urban centers.

In its email reply, SBC characterizes ORA's statements with respect to this DR as “unfounded.”

Discussion

The ORA request identifies specific maps provided to the FCC on August 14, 2004 and orders SBC to “provide a new, and corresponding, set of maps in which the following additional information is identified ...” ORA thus seeks maps that do not presently exist. ORA asks SBC to take those maps and

make new ones, detailing different information than what was given to the FCC. Thus, ORA's statement in its email below that "ORA has also found SBC documents showing all CLECs' fibre in California urban centers" is immaterial. SBC does not dispute that such information was provided to the FCC. But that is not what ORA asked for in its initial request. Moreover, SBC asserts that the CDs containing these materials either were provided to the ORA or are being provided.

SBC explained in its reply the burden associated with making new maps. SBC indicated that it would take several months to create the maps requested and ORA has not set forth fact or sufficient argument to demonstrate otherwise. ORA does not present anything to challenge evidence on that point. Accordingly, upon provision of the remaining CD materials that SBC has committed to provide to ORA in response to this matter, the DR response shall be deemed complete. No further order to compel additional materials will be required.

Data Requests 6-13 through 6-16:

ORA objects to the reference "Please see the testimony of testimony of Deborah Aron" as the only substantive response to each of requests 6-13 through 6-16 as vague, improper and inadequate. ORA contends that the responses should be self-contained, and that Applicants failed to provide responsive answers to any of these Requests.

DR 6-13 asks Applicants to "define all relevant product and geographic markets" in which they are currently engaged in California, with reference to the DOJ/FTC Horizontal Merger Guidelines, and to provide market share information regarding those markets. SBC's Supplemental Response states that SBC has not performed any "state-specific studies." ORA claims that this

response (1) does not answer the question of in which relevant product and geographic markets in California Applicants are engaged, a question SBC should be able to know (and will have to answer in its Hart Scott Rodino filings with DOJ); and (2) even if SBC has not done state-specific studies, it may have done national or other studies of the relevant product and geographic markets. ORA moves for a prompt and complete response to this request.

DR 6-14 asks the same question as DR 6-13, but from a historical perspective since 1996. To meet Applicants' over breadth objection, ORA offered to limit the request to identification of markets in which Applicants competed as of January 1, 2001. SBC's Supplemental Response asserts that it has "not performed any state specific studies." ORA considers this answer inadequate, and requests an order compelling a prompt and complete response.

DR 6-15 asks for the same sort of market definition and market share information related to Internet-specific products and services for the California market. This request also asks for identification of known competitors in these markets. SBC agreed to supplement its response, but it remained unclear what this supplement would consist of. SBC's just-received Supplemental Response is the same assertion that it has "not performed any state specific studies," which is inadequate for the reasons expressed above.

DR 6-16 asks whether AT&T and SBC compete with each other in interexchange services in California, and if so, what the relevant markets, market share, and competitors are. SBC agreed to supplement its response, but it remained unclear what this supplement would consist of. SBC's just-received Supplemental Response answer the question whether or not AT&T and SBC compete in this market, but does not identify the relevant markets, market

shares, and competitors. ORA requests an order compelling a prompt and complete response to this request.

In its email reply, ORA requests a ruling compelling Applicants to respond to the interrogatories as written, and define all relevant product and geographic markets, with reference to the DOJ/FTC Horizontal merger guidelines if Applicants have made the attempt to so define the markets, and if not, without reference to the merger guidelines.

Applicants object to Data Requests 6-13 through 6-16 claiming that those questions call for legal conclusions. ORA argues, however, that such interrogatories are not objectionable because they may require some legal content in response: “An interrogatory is not objectionable because an answer ... relates to fact or the application of law to fact, or would be based on ... legal theories.” CCP § 2030(c)(6).

Discussion

While Applicants have not done any state-specific studies, they have not confirmed whether they may have done national or other studies of the relevant product or geographic markets. Applicants shall not be required to produce new studies specifically in response to this DR. Applicants, however, are directed to provide any such national or other studies to the extent they may have performed them. To the extent that Applicants subsequently produce such studies pursuant to their Hart Scott Rodino filings with DOJ, they shall promptly provide copies of such filings to ORA.

In its response to the Motion, SBC has explained that, except for the analysis performed by Dr. Schwartz as described below, it has not engaged in the exercise of defining the relevant markets, and obtaining or estimating market share data related to the provision of specific telecommunications services in

California that would allow SBC to provide the requested information. SBC explains that Dr. Schwartz performed an analysis with respect to the Internet backbone traffic for North America, and US revenues for specified Internet-related services, and the analysis provided to the RCC in response to FCC Request 13. SBC's response will be accepted as its response with respect to the extent of its analysis on this issue. No further response to DRs 6-13 through 6-16 beyond this shall be compelled.

Data Request 6-17:

This request asks for maps of "interexchange fiber optic network facilities owned by SBC or any affiliate" in California. This request is not limited to "readily available information," but seeks the most up-to-date and complete map(s) in SBC's possession, custody or control. To the extent there is any unclarity about the response, ORA seeks verification that the production of such map(s) has occurred. ORA seeks prompt disclosure of the requested maps within four business days of a Ruling.

In its email, ORA states that it seeks "a map of all interexchange fiber optic network facilities owned by SBC or any affiliate." SBC produced one 8.5x11 map. While responsive, ORA does not consider the map to show sufficient detail at the urban centers of the four different types of o.c. (optical cable) fiber shown on the map. In the urban centers, the map appears as an undifferentiated welter of overlapping lines. ORA requests a color copy blow-up of the urban centers (Bay Area, Sacramento, Los Angeles, San Diego).

In its email, SBC responds that it provided ORA with the requested map in color on May 24, 2005, three days before ORA brought its motion to compel. SBC claims that ORA never bothered to review what was provided and

misrepresented in its motion that it sought production of this material. ORA now admits it has the map and that the map is responsive.

Discussion

It is concluded that SBC has provided a complete response to the original Data Request 6-17, and no further Commission action is necessary on Request 6-17. ORA's requests for additional map detail constituted a new data request for additional information regarding more granular data. While SBC agrees to work with ORA and assess its new request, this is beyond the scope of the ORA Motion to Compel.

Data Request 6-22:

This request asks for a description and quantification of cost savings achieved by the SBC-Ameritech merger. In its email, ORA accepts Applicants response, and withdraws this data request. No further Commission action is necessary.

Data Request 6-24:

Request 6-24 asks for the "best estimate of the short-run variable costs per minute" of certain types of calls. Applicants' response states that "the only costs by service available are Total Service Long Run Incremental Cost (TSLIRIC)." ORA stated it would accept in response such TSLRIC runs and analyses as SBC has done in the last 12 months, and – to the extent materially different – any runs that can be generated today. The just-received Supplemental Responses identify a document which impliedly answers the question posed. ORA still seeks an order requiring that SBC respond in a "straightforward manner to the substance of this question," and that SBC be allowed to produce documents in lieu of an interrogatory response only if those documents clearly answer the question.

ORA agrees to withdraw the motion as to this Request if in its review of the cited document it finds a clear and unambiguous response.

In its email reply, ORA states that it asked about SBC's short run variable costs per minute for four types of calls. Applicants provided IRD reports. ORA requests that Applicants be compelled to provide a verified response confirming that the price floors as of 1/1/05 presented in the 2005 Category II IRD Reports represent SBC's best estimates of short run variable costs per minute for each included category. For document control, ORA asks that Applicants provide a Bates-stamped version of the IRD reports, and reference that in their response.

In its response to the Motion, SBC argues that it does not have any further information, and that no documents that it has are directly response to this ORA request. SBC criticizes ORA's refusal to accept SBC's explanations and the sworn declaration of Peter Hayes as a sufficient response.

Discussion

This data request shall be deemed complete in view of SBC's assertion that it does not have any further information, and that no documents that it has are directly response to this ORA request.

Data Request 6-25:

DR 6-25 asked for information, of the type Dr. Schwartz submitted regarding the IP backbone based on 2003 and 2004 data, for March 2005. Applicants apparently objected that they have not yet compiled this information. ORA offered to accept a verified response containing the most recent data SBC has compiled or has, of the type Dr. Schwartz submitted. In its email, ORA accepts Applicants' response and withdraws its motion as to this data request. Thus, no further Commission action is necessary.

IT IS RULED that:

1. The Motion of ORA is granted, in part, and denied in part, as discussed for each Data Request Item noted above.

2. Where Applicants have agreed to provide previously contested responses and materials, but where no due date for delivery is indicated, Applicants shall served such additional materials on ORA promptly, within four business days of this ruling.

3. Other answers and responses to the outstanding discovery items as ordered in this ruling, shall be served on ORA within four days of the date of this Order, unless Applicants and ORA stipulate to some other arrangement, or unless Applicants obtain expanded time on showing of good cause.

4. Applicants will not be required to provide a separate written verification of every data response item as requested in ORA's Motion provided that Applicants produce a complete response to those items within four business days of this ruling.

5. To the extent that Applicants provide a less-than-complete response to any Data Request item, as directed above, the Applicants shall provide a written statement to ORA within four business days specifically listing all outstanding items that have not yet been provided pursuant to this ruling, with a date certain as to when the delinquent item will be provided.

6. In instances where Applicants are required to provide documents in response to a data request, they should provide all relevant documents and information in their possession, custody, or control, including documents and information in the possession, custody or control of their agents and/or affiliates. Applicants should provide documents and information in their possession, custody or control, as well as in the possession, custody or control of their California affiliates, and of any telecommunications affiliate doing business in

the State of California in which Applicants (or either of them) own, directly or indirectly, a 50% or greater share.

7. Except where voluminous (over 500 pages in printed form), electronic documents should be produced electronically and in paper form with a Bates number affixed. Where produced electronically, documents should be produced in their “native” form (MS Word, Excel, etc.) rather than in an imaged form (Acrobat, .tif) (except where the “native” form is an Acrobat .pdf or a .tif file). Where a document is too voluminous to be produced in paper form, it may be produced electronically only, but any such CD or other electronic medium containing such documents shall be labeled and accompanied with an index specifying the precise contents of the CD or other medium. Applicants should provide information and documents to ORA that are clearly labeled.

Dated June 8, 2005, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding ORA's Second Motion to Compel on all parties of record in this proceeding or their attorneys of record.

Dated June 8, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.